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NOT FOR PUBLICATION

FILED

JUN - 1 2009

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA6  
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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA8 In re Case No. 07-14113-A-7  
9 LUIS ALBERTO PELAYO DC No. KDG-7

10 Debtor. /

11  
12 FINDINGS OF FACT AND CONCLUSIONS OF LAW13 A hearing was held April 29, 2009, on the Second Application  
14 for Additional Attorney's Fees by Klein, DeNatale, Goldner,  
15 Cooper, Rosenlieb & Kimball, LLP ("Klein DeNatale" or  
16 "Applicant") as attorneys for the debtor. Objections to the  
17 application were filed by Paccar Financial Corp. ("Paccar") and  
18 by The Golden 1 Credit Union ("Golden 1").19 The application requests approval of additional fees of  
20 \$3,193.50 and reimbursement of expenses of \$92.23 for services  
21 rendered and costs advanced from July 22, 2008, to January 21,  
22 2009. The application reflects that when Applicant was employed  
23 to represent the debtor in his chapter 13 case, Applicant agreed  
24 to an initial fee of \$5,000 pursuant to the Rights and  
25 Responsibilities of Chapter 13 Debtors and Their Attorneys (the  
26 "Rights and Responsibilities") filed December 7, 2007. On August  
27 28, 2008, Klein DeNatale filed a first application for additional  
28 attorney's fees, seeking additional attorney's fees of \$5,983.50

1 and an expense reimbursement of \$204.88, for services rendered  
2 and costs advanced from October 16, 2007, through July 21, 2008.  
3 The first application was approved without opposition.

4 The plan was confirmed on April 21, 2008. The first  
5 application for additional compensation was granted in September  
6 2008. On December 15, 2008, the debtor filed a motion to suspend  
7 payments under the plan. That motion was granted at a hearing  
8 January 22, 2009. On February 26, 2009, the chapter 13 trustee  
9 filed a motion to dismiss the case for failure to make plan  
10 payments. On March 17, 2009, the debtor voluntarily converted  
11 his case to chapter 7. Thus, when the hearing on this fee  
12 application was held, the case had already been converted to  
13 chapter 7.

14 Both Paccar and Golden 1 object to the application on the  
15 grounds that the fees requested are excessive. Both creditors  
16 state that the case does not appear to be anything more than a  
17 routine chapter 13 case for which counsel would normally receive  
18 a "no look" fee of \$5,000. Here, Klein DeNatale has already  
19 received authorization for compensation in excess of \$11,000.

20 Klein DeNatale replies that of the "no look" fee of \$5,000,  
21 \$1,954.46 has been paid. Of the compensation allowed in the  
22 first fee application of \$5,983.50, \$4,812.13 has been paid.

23 Klein DeNatale also argues that the case is not simple or  
24 routine. Debtor owned and operated a commercial trucking  
25 business shipping cargo throughout the United States. "Debtor's  
26 business grossed over \$1.4 million in 2005, over \$900,000 in  
27 2006, and about \$600,000 in 2007." (Reply at paragraph 2). The  
28 debtor had total debt of about \$600,000 at the time the

1 bankruptcy case was filed. The firm also argues that a motion to  
2 suspend payments is not part of a routine chapter 13 case and  
3 should not be considered part of the "no look" fee.

4 All parties recognize the standards that guide the court in  
5 ruling on this application. Those standards are found at  
6 Bankruptcy Code § 330(a)(3) and (4), which state:

7 (3) In determining the amount of reasonable compensation to  
8 be awarded to an examiner, trustee under chapter 11, or  
9 professional person, the court shall consider the nature,  
the extent, and the value of such services, taking into  
account all relevant factors, including--

11 1. (A) the time spent on such services;

12 (B) the rates charged for such services;

14 (C) whether the services were necessary to the  
15 administration of, or beneficial at the time at which the  
16 service was rendered toward the completion of, a case under  
this title;

17 (D) whether the services were performed within a reasonable  
18 amount of time commensurate with the complexity, importance,  
19 and nature of the problem, issue, or task addressed;

20 (E) with respect to a professional person, whether the  
21 person is board certified or otherwise has demonstrated  
22 skill and experience in the bankruptcy field; and

23 (F) whether the compensation is reasonable based on the  
24 customary compensation charged by comparably skilled  
practitioners in cases other than cases under this title.

25 (4) (A) Except as provided in subparagraph (B), the court  
26 shall not allow compensation for--

28 (i) unnecessary duplication of services; or

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2       (ii) services that were not--  
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4           (I) reasonably likely to benefit the debtor's estate; or  
5  
6           (II) necessary to the administration of the case.  
7  
8       (B) In a chapter 12 or chapter 13 case in which the debtor  
9       is an individual, the court may allow reasonable  
10      compensation to the debtor's attorney for representing the  
11      interests of the debtor in connection with the bankruptcy  
12      case based on a consideration of the benefit and necessity  
13      of such services to the debtor and the other factors set  
14      forth in this section.

15      In chapter 13 cases in the Eastern District of California,  
16      debtors and their attorneys execute and file a "Rights and  
17      Responsibilities" statement that outlines the mutual obligations  
18      of debtors and counsel. The Rights and Responsibilities is a  
19      form statement. It provides that after the case is filed,  
20      attorneys agree to provide certain legal services that are  
21      outlined in the Rights and Responsibilities. These legal  
22      services include "prepare, file, and serve necessary  
23      modifications to the plan which may include suspending, lowering,  
24      or increasing plan payments." Therefore, Klein DeNatale is  
25      incorrect that a motion for suspension of payments is not  
26      mentioned in the Rights and Responsibilities. Indeed, a motion  
27      for suspension is clearly contemplated as a likely and routine  
28      part of a chapter 13 case and thus is provided for in the Rights  
and Responsibilities.

1       Also relevant is the court's "Guidelines for Payment of  
2 Attorneys' Fees in Chapter 13 Cases" (the "Guidelines"). The  
3 Guidelines provide at paragraph 4:

4  
5       "4. If counsel has filed an executed copy of the 'Rights  
6 and Responsibilities of Chapter 13 Debtors and Their  
7 Attorneys,' but the initial fee is not sufficient to fully  
8 compensate counsel for the legal services rendered in the  
9 case, the attorney may apply for additional fees. The court  
10 will not approve, however, additional compensation in cases  
11 in which no plan is confirmed, or for work necessary to  
12 confirm the initial plan. Further, counsel should not view  
13 the fee permitted by these Guidelines as a retainer that,  
14 once exhausted, automatically justifies a fee motion. This  
15 fee is sufficient to fairly compensate counsel for all  
16 preconfirmation services and most post-confirmation services  
such as reviewing the notice of filed claims, objecting to  
untimely claims, and modifying the plan to conform it to the  
claims filed. Only in instances where substantial and  
unanticipated post-confirmation work is necessary should  
counsel request additional compensation. The form  
application attached hereto may be used by the attorney when  
seeking additional fees. The necessity for a hearing on the  
application shall be governed by Bankruptcy Rule  
2002(a)(6)."

17  
18       Thus, only where "substantial and unanticipated case post-  
19 confirmation work is necessary should counsel request additional  
20 compensation."

21  
22       It is with this guidance that the court reviews the  
23 compensation requested in this application. From the total fees  
24 requested of \$3,193.50, \$1,150 was billed for fee applications  
25 and \$1,913.50 was billed for the motion to suspend payments. \$74  
26 was for case administration (a preparation of change of address  
27 for the debtor) and \$55 was for claims administration (an  
28

1 exchange of e-mails with counsel for Golden 1).

2       The objecting creditors are correct that the compensation  
3 requested is excessive and to some extent fails to comply with  
4 the requirements of § 330 of the Bankruptcy Code.  
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6       Generally, there are a number of entries for services  
7 rendered by an attorney that should have been rendered by a  
8 competent paralegal or secretary. For instance, the entry by JLE  
9 of .3 hours for preparing a notice of change of address is  
10 excessive. Also in that category of work that was performed by  
11 an attorney that could reasonably have been performed by a  
12 paralegal are the preparation of notices of hearings for which  
13 JLE billed .7 hours on August 1, 2008 and CMC billed .5 hours on  
14 December 1, 2008.

16       More generally, the time spent in preparing the first  
17 application for compensation is excessive. At \$1,150, it is more  
18 than twenty percent of the initial "no look" fee. Additionally,  
19 it is almost twenty percent of the amount awarded in the first  
20 fee application. Further, the motion to suspend payments  
21 resulted in a request for compensation of \$1,913.50. Yet, such a  
22 motion is contemplated in the initial \$5,000 "no look" fee.  
23

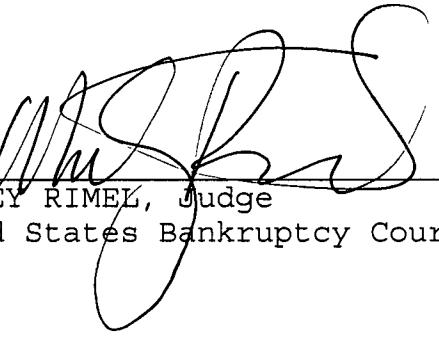
24       Further, 7.4 hours were incurred directly by JLE and CMC in  
25 preparation of the actual motion to suspend payments, and this  
26 does not include any of the various e-mails to and from counsel  
27

1 and the client. JLE billed at between \$155 and \$185 per hour at  
2 this time, and CMC billed at \$210 per hour. This is simply too  
3 much money and too much time for a motion to suspend payments  
4 that as stated above should have been included in the original  
5 "no look" fee. The basic documents that counsel prepared for  
6 this motion were in fact very straightforward. The motion to  
7 suspend payments is two pages long, the declaration of the debtor  
8 is two pages long, and the notice of hearing is two pages long.

10 The long and the short of it is that the requested fees are  
11 simply not reasonable in light of the time spent on the services  
12 and the rate charged for the services. As set forth above, to a  
13 large extent the services were not performed within a reasonable  
14 amount of time commensurate with the complexity, importance and  
15 nature of the task at hand.

17 For all the foregoing reasons, the requested fees of  
18 \$3,193.50 are reduced to \$1,000. Reimbursement of expenses is  
19 allowed in the amount of \$92.23 as requested. A separate order  
20 will issue.

22 DATED: June 1, 2009.

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24   
25 WHITNEY RIMEL, Judge  
26 United States Bankruptcy Court  
27  
28

1 PROOF OF SERVICE BY MAIL

2 STATE OF CALIFORNIA )  
3 ) ss.  
4 COUNTY OF FRESNO )

5 I am a citizen of the United States and a resident of the  
6 county aforesaid; I am over the age of eighteen years and not a  
7 party to the within above-entitled action; my business address is  
8 2656 U.S. Courthouse, 1130 O Street, Fresno, California, 93721.  
9 On June 1, 2009, I served the within document on the interested  
10 parties in said action by placing a true copy thereof enclosed in  
11 a sealed envelope with postage thereon fully prepaid, in the  
12 United States mail at Fresno, California, addressed as follows:

13 Leonard K. Welsh, Esq.  
14 Jacob L. Eaton, Esq.  
15 KLEIN, DeNATALE, GOLDNER, COOPER,  
16 ROSENLIEB & KIMBALL  
17 4550 California Ave., Second Floor  
18 Bakersfield, California 93309

19 Glen Dresser, Esq.  
20 LAW OFFICES OF GLELN DRESSER  
21 12650 Riverside Drive, Suite 100  
22 North Hollywood, CA 91607

23 Roxanne T. Daneri, Esq.  
24 555 University Avenue, Suite 114  
25 Sacramento, CA 95825

26 Office of the United States Trustee  
27 2500 Tulare Street  
28 Suite 1401  
Fresno, California 93721

29 I certify (or declare), under penalty of perjury, that the  
30 foregoing is true and correct. Executed on June 1, 2009, at  
31 Fresno, California.

32   
33 \_\_\_\_\_  
34 Kathy Torres, PLS